

BEFORE THE PERSONNEL APPEALS BOARD  
STATE OF WASHINGTON

SHIRO VANCE  
Appellant,  
v.  
UNIVERSITY OF WASHINGTON,  
Respondent.

) Case No. DISM-04-0001  
)  
) FINDINGS OF FACT, CONCLUSIONS OF  
) LAW AND ORDER OF THE BOARD  
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**I. INTRODUCTION**

**1.1 Hearing.** This appeal came on for hearing before the Personnel Appeals Board, GERALD L. MORGEN, Vice Chair, and BUSSE NUTLEY, Member. The hearing was held at Harborview Medical Center, Pat Steele Building, Conference Room 2097, Seattle, Washington, on August 5, 2004.

**1.2 Appearances.** Appellant Shiro Vance was present and was represented by Christopher J. Coker, Attorney at Law, of Parr, Younglove, Lyman & Coker, P.L.L.C. Jeffery W. Davis, Assistant Attorney General, represented Respondent University of Washington.

**1.3 Nature of Appeal.** This is an appeal from a disciplinary sanction of dismissal for gross misconduct and willful violation of departmental policies and procedures. Respondent alleges

Appellant purposely withheld information during a police investigation, exhibited behavior unbecoming for an officer, and was ultimately convicted of Hindering Law Enforcement.

## II. FINDINGS OF FACT

2.1 Appellant Shiro Vance was a Campus Security Officer in the Department of Public Safety at Harborview Medical Center (HMC) and a permanent employee for Respondent University of Washington. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 251 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on January 5, 2004.

2.2 Appellant began his employment in the Public Safety Office in April 1996. As a Security Officer, Appellant's primary duties included general security to protect life and property, enforcing laws and ordinances, maintaining order, and preventing and investigating crime and related duties. Appellant has received prior disciplinary action and has a history of prior counseling and letters of reprimand. Appellant's personnel file includes the following:

- May 22, 1997 – Letter of Counsel for having an unauthorized person at the Control Center.
- June 22, 1997 – Letter of Reprimand for failing to work overtime when ordered to do so.
- August 30, 2000 – Letter of Counsel for repeated tardiness.
- December 13, 2000 – Letter of Reprimand for insubordination.
- May 10, 2001 – Two-day suspension for leaving his post unattended and for being untruthful about the incident.

2.3 By letter dated December 17, 2003, Johnese Spisso, Chief Operating Officer at HMC, notified Appellant of his dismissal for gross misconduct and willful violation of departmental

1 policies and procedures, effective January 1, 2004. In a memo to Ms. Spisso dated November 17,  
2 2003, Mr. Warren Walls, Director of the Public Safety Department at the time, described the  
3 specific allegations of hindering law enforcement and exhibiting behavior unbecoming for an  
4 officer, including Appellant pleading guilty by Alford Plea to Hindering Law Enforcement. Mr.  
5 Walls determined Appellant's misconduct violated departmental policies 03.01.12, Conduct  
6 Unbecoming an Officer; 03.10.54, Criminal Conduct; and 03.02.01, Duties and Responsibilities.

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8 2.4 On December 27, 2002, while on his regularly scheduled shift, Appellant loaned his car to a  
9 friend and former co-worker at HMC, Antonio Coley. While borrowing Appellant's car, Mr. Coley  
10 confronted parking lot attendants at a nearby McDonald's, and the Seattle Police Department  
11 responded to the incident. The police officers determined Mr. Coley, whose identity was unknown  
12 because he left the scene prior to the police arriving, had threatened parking lot attendants and  
13 appeared to have a weapon. As a result, the police officers treated the situation very seriously and  
14 believed the suspect to be armed and dangerous.

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16 2.5 The parking lot attendants provided police with two license plate numbers, one of which  
17 was registered to Appellant's vehicle. Officer Matthew Hyra from the East Precinct recognized  
18 Appellant as an HMC security officer because HMC is located within East Precinct. Consequently,  
19 Officer Hyra telephoned HMC from his cell phone to see if Appellant was on duty and could offer  
20 information to expedite apprehending the suspect. The conversation that occurred between  
21 Appellant and Officer Hyra is in dispute.

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23 2.6 Appellant testified he was uncertain about the caller's identity and that such a call was  
24 uncommon. Appellant further stated the caller was irate and intimidating, and he did not trust the  
25 individual. Appellant stated he acknowledged to the caller he loaned the car to a friend and stated  
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1 his friend's name was Tony, whom he knew from playing basketball. Appellant then testified that  
2 the person on the telephone hung up on him by slamming the phone down.

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4 2.7 Appellant testified he waited until his break and contacted Mr. Coley by scrolling through  
5 his cell phone and dialing a number he thought belonged to Mr. Coley's girlfriend. Appellant said  
6 he then advised Mr. Coley to contact police. In an earlier deposition, Appellant stated he did not  
7 know the phone number, address or last name of his friend Tony.

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9 2.8 By contrast, Officer Hyra testified he professionally identified himself to Appellant as a  
10 Seattle Police Officer and stated he was investigating a felony harassment involving the individual  
11 driving Appellant's car. Officer Hyra said he asked Appellant who had been driving his car, but  
12 Appellant simply responded he lent his car to a "good friend" named Tony, and that he could not  
13 remember Tony's last name, but that it might have been Williams. Appellant did not provide  
14 Officer Hyra with a phone number or address for Tony. Officer Hyra became frustrated and  
15 terminated the call by pressing the end button on his cell phone. Officer Hyra's version was  
16 corroborated by Officer Michael Berndt, who was seated next to him in the patrol car.

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18 2.9 Next, Officer Hyra went to the address listed on the other vehicle registration and  
19 coincidentally ran into Mr. Coley leaving his girlfriend's apartment. When confronted by police,  
20 Mr. Coley informed the officers Appellant had just notified him by telephone the police were  
21 looking for him.

22  
23 2.10 We do not find Appellant's version of the events plausible or consistent. Appellant must  
24 have believed Officer Hyra was a police officer because he called Mr. Coley to let him know the  
25 police were trying to find him. In addition, we find it unlikely that Officer Hyra hung up the phone  
26 in the abrupt manner described by Appellant because he simply needed to press a button to end the

1 call from his cell phone. Further, Antonio Coley and Appellant had previously worked together at  
2 HMC, and Mr. Coley listed Appellant as a reference on his employment application. Public safety  
3 officers at HMC also wear name badges that display the officer's picture, first initial, and last name.  
4 Finally, we do not find it believable that Appellant would entrust his vehicle to a mere  
5 acquaintance; therefore, Appellant more likely than not knew Mr. Coley well enough to know his  
6 last name and how to reach him.

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8 2.11 As a result, we find a preponderance of the credible evidence supports that Appellant was  
9 untruthful and uncooperative with a Seattle police officer, acted unprofessionally, and obstructed a  
10 vital police investigation.

### 11 12 13 **III. ARGUMENTS OF THE PARTIES**

14 3.1 Respondent argues this case is about truthfulness. Respondent argues as a Public Safety  
15 Officer, Appellant had an obligation to reveal personal knowledge about a suspect involved in a  
16 possible crime. Respondent contends Appellant had an even higher duty to assist police with the  
17 investigation by virtue of his position as a security officer. Respondent asserts Appellant clearly  
18 engaged in behavior contrary to the Code of Ethics and violated agency policy when he discredited  
19 the security department with his refusal to cooperate with Seattle police. Respondent argues  
20 Appellant not only withheld pertinent information but also warned the suspect police were looking  
21 for him and, as a result, put fellow officers in a potentially dangerous situation. Respondent further  
22 argues Appellant pled guilty to and was convicted of Hindering Law Enforcement. Respondent  
23 argues Appellant has not been credible throughout the investigation, and his marred integrity has  
24 significantly damaged the working relationship between Harborview security officers and Seattle  
25 police. Respondent contends Appellant's conflicting testimony and repeated contradictions reveal  
26 his dishonesty and cannot be tolerated from a public safety officer.

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2 3.2 Appellant argues he was an eight-year employee who performed excellent work as a  
3 security officer and had a good rapport with staff and the community. Appellant argues a  
4 contentious relationship existed within the public security office that created an atmosphere of  
5 mistrust among officers within the department as well as with Seattle police in the precinct.  
6 Consequently, Appellant argues he was apprehensive about speaking with Officer Hyra because he  
7 could not be certain of his identity. Appellant argues significant problems within the department  
8 mitigated the way he responded to Officer Hyra and asserts those problems existed long before the  
9 incident leading up to his dismissal. Appellant argues he entered an Alford plea to the charge of  
10 Hindering Law Enforcement but that such a plea did not necessarily mean he was guilty, just that  
11 enough evidence existed to convict him of the charge. Appellant argues under the circumstances  
12 dismissal was too severe.

#### 13 14 15 **IV. CONCLUSIONS OF LAW**

16 4.1 The Personnel Appeals Board has jurisdiction over the parties and the subject matter.  
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18 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting  
19 the charges upon which the action was initiated by proving by a preponderance of the credible  
20 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the  
21 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of  
22 Corrections, PAB No. D82-084 (1983).

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24 4.3 Willful violation of published employing agency or institution or Personnel Resources  
25 Board rules or regulations is established by facts showing the existence and publication of the rules  
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1 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the  
2 rules or regulations. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

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4 4.4 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to  
5 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989). Flagrant  
6 misbehavior occurs when an employee evinces willful or wanton disregard of his/her employer's  
7 interest or standards of expected behavior. Harper v. WSU, PAB No. RULE-00-0040 (2002).

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9 4.5 Respondent has proven by a preponderance of the evidence that Appellant violated Policy  
10 03.01.12, Conduct Unbecoming an Officer, when he intentionally lied to a Seattle police officer and  
11 was not forthcoming with crucial information about a potentially dangerous suspect. Respondent  
12 has also proven that Appellant violated Policy 03.10.54, Criminal Conduct, because Appellant  
13 failed to obey the law when he hindered a police investigation. Additionally, Respondent has  
14 proven that Appellant violated Policy 03.02.01, Duties and Responsibilities, because Appellant's  
15 conduct undermined the primary functions of his position, namely, "protecting life and property."  
16 Furthermore, Appellant's evasive answers clearly demonstrated unprofessional behavior.

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18 4.6 Respondent has proven by a preponderance of the evidence that Appellant's misconduct  
19 rose to the level of gross misconduct. Appellant's actions impeded the police investigation and  
20 jeopardized HMC's working relationship with the Seattle Police Department. Appellant's actions  
21 further interfered with the department's ability to carry out its mission to partner with police in the  
22 precinct in order to provide a secure environment at HMC.

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24 4.7 Although it is not appropriate to initiate discipline based on prior formal and informal  
25 disciplinary actions, including letters of reprimand, it is appropriate to consider them regarding the  
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1 level of the sanction which should be imposed here. Aquino v. University of Washington, PAB No.  
2 D93-163 (1995).

3  
4 4.8 In determining whether a sanction imposed is appropriate, consideration must be given to  
5 the facts and circumstances including the seriousness and circumstances of the offense. The penalty  
6 should not be disturbed unless it is too severe. The sanction imposed should be sufficient to prevent  
7 recurrence, to deter others from similar misconduct, and to maintain the integrity of the program.  
8 An action does not necessarily fail if one charge is not sustained unless the entire action depends on  
9 the unproven charge. Holladay v. Dep't of Veteran's Affairs, PAB No. D91-084 (1992).

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11 4.9 Under the facts and circumstances, we conclude dismissal is the appropriate sanction, and  
12 the appeal of Shiro Vance should be denied.

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14 **V. ORDER**

15 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Shiro Vance is denied.

16  
17 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

18  
19 WASHINGTON STATE PERSONNEL APPEALS BOARD

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21 \_\_\_\_\_  
22 Gerald L. Morgen, Vice Chair

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24 \_\_\_\_\_  
25 Busse Nutley, Member